Supreme Court of the United States.

No. 16, Original.—October Term, 1904.

Ex parte: In re Gertrude Glaser, Administratrix, Petitioner.

[May 8, 1905.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This is a petition by Gertrude Glaser, as administratrix, for mandamus, requiring the judges of the Circuit Court of the United States for the Eastern District of New York to take jurisdiction and proceed against Anthony P. Langer in a certain suit alleged by petitioner to be pending and undetermined in that court, wherein Gertrude Glaser, as administratrix, is plaintiff, and Anthony P. Langer is defendant, and to strike from the records of the court a certain order made on the 14th day of November, 1904, entitled: "'In the Matter of the Application of Gertrude Glaser, Administratrix, &c., to compel the filing of an answer, or other relief, in an action alleged to be pending between Gertrude Glaser, as Administratrix, &c., of Isador Glaser, deceased, Plaintiff, and Anthony P. Langer, Defendant,' whereby petitioner's application to compel the filing of said answer was denied, on the ground that no such action was pending, and to make such disposition of said suit as ought to have been made had said order not been made and entered therein . . ."

The petition alleged the commencement in the Circuit Court of a common law action by petitioner as administratrix against Langer, to recover damages for negligence causing the death of petitioner's husband, and rested the jurisdiction on diversity of citizenship. The circumstances in respect of a mistake, by reason of which no summons was issued, though service of copy was made, are set forth in detail, and the fact alleged of notice of appearance and answer, and the assertion by defendant's attorney that this was in ignorance of the defect in the summons.

Leave to file the petition was granted, and this having been done, a rule was entered thereon, to which the judge presiding in the Circuit Court, and before whom all the proceedings referred to in the petition were had, and by whom the decision was made, made due return, submitting his action in the premises, and certifying that his reasons for denying the motion were set forth in the order, which is given at length. It appears therefrom that the motion was denied "upon the sole ground that no action of Gertrude

Glaser, as administratrix of the goods, chattels and credits of Isador Glaser, deceased, plaintiff, against Anthony P. Langer, defendant, is nor ever has been pending in this court."

In cases over which we possess neither original nor appellate jurisdiction, we cannot grant mandamus. Rev. Stat. § 716; *In re Commonwealth of Massachusetts, Petitioner*, 197 U. S.

Of course there is no pretense of original jurisdiction here, and since the passage of the act of March 3, 1891, 26 Stat. 826, c. 517, we have no jurisdiction to review the judgments or decrees of the District and Circuit Courts directly by appeal or writ of error in cases such as this case if pending in the Circuit Court.

Rule discharged. Petition denied.

True copy.

Test:

Clerk Supreme Court, U. S.